

AMENDED IN ASSEMBLY MARCH 20, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 22**

**Introduced by Assembly Member Maddox**

December 2, 2002

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An act to *amend Section 1596.871 of, and to add Section 1596.8717 to, the Health and Safety Code, relating to child care.*

LEGISLATIVE COUNSEL'S DIGEST

AB 22, as amended, Maddox. ~~Day care employees~~ *Child day care facilities: family day care homes: criminal record* police contact information.

*Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license or special permit for a person to operate or manage a child day care facility or a family day care home, the fingerprinting of, and criminal record clearance for, applicants and persons to be employed by, reside at, or be present in the any of these facilities, except as specified. Existing law requires the Department of Justice to conduct the search for criminal history information, and also to have a 2nd set of fingerprints processed by the Federal Bureau of Investigation.*

*Existing law also authorizes the department to revoke a license or special permit to operate or manage these facilities if any person employed by, residing at, or present in, in specified capacities, a facility listed above has been convicted of specified offenses, unless the department has granted an exemption from disqualification.*

*This bill would require the department, before issuing a license or special permit to any person to operate or manage a child day care*

facility or a family day care home, and before specified other persons may be present in the facility or home, to secure from the local law enforcement agency of the city or county, as appropriate, in which the child day care facility or family day care home is or is to be located, or in which the applicant or other person resides, or both, information regarding contacts by local law enforcement agencies, if any, with the applicant or other person. This bill would require that the local law enforcement agency supply the information to the department upon request.

This bill would also authorize the department to obtain information regarding contacts by a local law enforcement agency with a licensee, special permit holder, or specified persons who are employed by, reside at, or are present in a child day care facility or family day care home, as necessary to the performance of its duties to inspect or investigate a child day care facility or family day care home and persons associated with a child day care facility or family day care home, and would authorize the department to revoke the license or special permit, based on the information. This bill would require that the local law enforcement agency supply the information to the department upon request.

Because a violation of any law relating to these facilities is a crime, and because this bill would impose additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law provides for the licensure and regulation, by the State Department of Social Services, of child day care facilities.~~



~~Existing law makes a violation of these provisions a crime. Existing law requires the department or any other approving authority to perform a criminal record check on an applicant for a license to operate a child day care facility, as well as for staff and employees of a child day care facility.~~

~~Existing law prohibits the dissemination of criminal record information by a local law enforcement agency except as prescribed.~~

~~This bill would, notwithstanding any other provision of law, permit a law enforcement agency to release to a child day care facility or to a family day care home not subject to child day care facility licensing provisions, criminal record information and other information concerning any encounter that specified persons have had with law enforcement that is not already available under existing law if that person has voluntarily signed a waiver.~~

~~This bill would require the department to prepare a waiver form that describes the person's statutory and constitutional privacy rights under existing law and to provide these forms to law enforcement agencies.~~

~~This bill would require that the waiver shall only extend to access to the information by a person who works at, operates, or is otherwise affiliated with the facility.~~

~~This bill would provide that any person who works at, operates, or is otherwise affiliated with the facility who obtains and disseminates information, not otherwise public, which that person knows or should reasonably know was obtained from confidential information, to a 3rd party is subject to a civil action for invasion of privacy by the individual to whom the information pertains.~~

~~Because a violation of child day care facility provisions is a crime, this bill would, by creating a new crime, constitute a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.~~

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 1596.8717 is added to the Health and~~  
SECTION 1. *Section 1596.871 of the Health and Safety Code*  
*is amended to read:*

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as defined in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) (1) Before issuing a license or special permit to any person to operate or manage a *child day care facility or family day care home licensed pursuant to this chapter, and before any person specified in subdivision (b) who is not exempted from fingerprinting is employed by, resides at, or is present in a child day care facility or family day care home*, the department shall secure from an appropriate law enforcement agency a criminal ~~record~~ history information to determine whether the applicant or any other person specified in subdivision (b) *who is not exempted from fingerprinting has ever been convicted* any of the following:

(A) A conviction of a crime other than a minor traffic violation ~~or arrested~~.

(B) An arrest for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5 of the Penal Code, for violating subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, ~~or for~~.

(C) A conviction of any crime for which the person has not been exonerated for which the department ~~cannot~~ may not grant an exemption ~~if the person was convicted and the person has not been exonerated from disqualification pursuant to subdivision (f).~~

1 (2) The criminal history information shall include the full  
2 criminal record, if any, of those persons, and subsequent arrest  
3 information pursuant to Section 11105.2 of the Penal Code.

4 (3) No fee shall be charged by the Department of Justice or the  
5 department for the fingerprinting of an applicant who will serve  
6 six or fewer children or any family day care *home* applicant for a  
7 license *or special permit*, or for obtaining a criminal record of an  
8 applicant pursuant to this section.

9 (4) The following shall apply to the criminal record  
10 information:

11 (A) If the State Department of Social Services finds that the  
12 applicant or any other person specified in subdivision (b) *who is*  
13 *not exempted from fingerprinting* has been convicted of a crime,  
14 other than a minor traffic violation, *or arrested for a crime*  
15 *specified in subparagraph (B) of paragraph (1), subject to*  
16 *subdivision (e)*, the application shall be denied, unless the director  
17 grants an exemption pursuant to subdivision (f).

18 (B) If the ~~State Department of Social Services~~ *department* finds  
19 that the applicant, or any other person specified in subdivision (b)  
20 *who is not exempted from fingerprinting*, is awaiting trial for a  
21 crime other than a minor traffic violation, the ~~State Department of~~  
22 ~~Social Services~~ *department* may cease processing the application  
23 until the conclusion of the trial *or other disposition of the case*.

24 (C) If no criminal ~~record~~ *history* information has been  
25 recorded, the Department of Justice shall provide the applicant and  
26 the State Department of Social Services with a statement of that  
27 fact.

28 (D) If the ~~State Department of Social Services~~ *department*  
29 finds after licensure *or the issuance of a special permit* that the  
30 licensee, *special permit holder*, or any other person specified in  
31 ~~paragraph (2) of~~ subdivision (b) *who is not exempted from*  
32 *fingerprinting*, has been convicted of a crime other than a minor  
33 traffic violation, *or arrested for a crime specified in subparagraph*  
34 *(B) of paragraph (1), subject to subdivision (e)*, the license *or*  
35 *special permit* may be revoked, unless the director grants an  
36 exemption pursuant to subdivision (f).

37 (E) An applicant *for licensure or for a special permit* and any  
38 other person specified in subdivision (b) shall submit a second set  
39 of fingerprints to the Department of Justice, for the purpose of  
40 searching the records of the Federal Bureau of Investigation, in

1 addition to the search required by subdivision (a). If an applicant  
2 meets all other conditions for licensure *or for a special permit*,  
3 *except for the State Department of Social Services' receipt of the*  
4 *Federal Bureau of Investigation's criminal history information for*  
5 *the applicant and persons listed in subdivision (b) who are not*  
6 *exempted from fingerprinting*, the department may issue a license  
7 *or special permit* if the applicant and each person described by  
8 subdivision (b) *who is not exempted from fingerprinting* has signed  
9 and submitted a ~~statement~~ *declaration, under penalty of perjury*,  
10 that he or she has never been convicted of a crime in the United  
11 States, other than a traffic infraction ~~as defined in punishable~~  
12 *pursuant to paragraph (1) of subdivision (a) of Section 42001 of*  
13 *the Vehicle Code, or arrested for a crime specified in*  
14 *subparagraph (B) of paragraph (1).*

15 (F) If, after licensure *or the issuance of a special permit*, the  
16 department determines that the licensee *or special permit holder*  
17 *or person specified in subdivision (b) who is not exempted from*  
18 *fingerprinting* has a ~~criminal record~~ *conviction of an offense other*  
19 *than a minor traffic violation or a record of arrest for any crime*  
20 *specified in subparagraph (B) of paragraph (1), subject to*  
21 *subdivision (e), the license may be revoked pursuant to Section*  
22 *1596.885. The department may also suspend the license pending*  
23 *an administrative hearing pursuant to Section 1596.886.*

24 (b) (1) In addition to the applicant, this section shall be  
25 applicable to criminal convictions *and arrests* of the following  
26 persons:

27 (A) Adults responsible for administration or direct supervision  
28 of staff.

29 (B) Any person, other than a child, residing in the *child day*  
30 *care facility or family day care home.*

31 (C) Any person who provides care and supervision to the  
32 children.

33 (D) Any staff person, volunteer, or employee who has contact  
34 with the children.

35 ~~(i) A volunteer providing time-limited specialized services~~  
36 ~~shall be exempt from the requirements of this subdivision if this~~  
37 ~~person is directly supervised by the licensee or a facility employee~~  
38 ~~with a criminal record clearance or exemption, the volunteer~~  
39 ~~spends no more than 16 hours per week at the facility, and the~~  
40 ~~volunteer is not left alone with children in care.~~



1 ~~(ii) A student enrolled or participating at an accredited~~  
2 ~~educational institution shall be exempt from the requirements of~~  
3 ~~this subdivision if the student is directly supervised by the licensee~~  
4 ~~or a facility employee with a criminal record clearance or~~  
5 ~~exemption, the facility has an agreement with the educational~~  
6 ~~institution concerning the placement of the student, the student~~  
7 ~~spends no more than 16 hours per week at the facility, and the~~  
8 ~~student is not left alone with children in care.~~

9 ~~(iii) A volunteer who is a relative, legal guardian, or foster~~  
10 ~~parent of a client in the facility shall be exempt from the~~  
11 ~~requirements of this subdivision.~~

12 ~~(iv) A contracted repair person retained by the facility, if not~~  
13 ~~left alone with children in care, shall be exempt from the~~  
14 ~~requirements of this subdivision.~~

15 ~~(v) Any person similar to those described in this subdivision,~~  
16 ~~as defined by the department in regulations.~~

17 (E) If the applicant is a firm, partnership, association, or  
18 corporation, the chief executive officer, other person serving in  
19 like capacity, or a person designated by the chief executive officer  
20 as responsible for the operation of the *child day care facility or*  
21 *family day care home*, as designated by the applicant agency.

22 (F) If the applicant is a local educational agency, the president  
23 of the governing board, the school district superintendent, or a  
24 person designated to administer the operation of the *child day care*  
25 *facility or family day care home*, as designated by the local  
26 educational agency.

27 (G) Additional officers of the governing body of the applicant,  
28 or other persons with a financial interest in the applicant, as  
29 determined necessary by the department by regulation. The  
30 criteria used in the development of these regulations shall be based  
31 on the person's capability to exercise substantial influence over the  
32 operation of the *child day care facility or family day care home*.

33 ~~(H) This section does not apply to employees~~

34 (2) *The following persons are exempt from the requirements*  
35 *applicable under paragraph (1):*

36 (A) *A volunteer providing time-limited specialized services*  
37 *shall be exempt from the requirements of this subdivision if this*  
38 *person is directly supervised by the licensee, special permit holder,*  
39 *or a child day care facility or family day care home employee with*  
40 *a criminal record clearance or exemption, the volunteer spends no*

1 *more than 16 hours per week at the child day care facility or family*  
2 *day care home, and the volunteer is not left alone with children in*  
3 *care.*

4 *(B) A student enrolled or participating at an accredited*  
5 *educational institution shall be exempt from the requirements of*  
6 *this subdivision if the student is directly supervised by the licensee,*  
7 *special permit holder, or a child day care facility or family day care*  
8 *home employee with a criminal record clearance or exemption, the*  
9 *child day care facility or family day care home has an agreement*  
10 *with the educational institution concerning the placement of the*  
11 *student, the student spends no more than 16 hours per week at the*  
12 *child day care facility or family day care home, and the student is*  
13 *not left alone with children in care.*

14 *(C) A volunteer who is a relative, legal guardian, or foster*  
15 *parent of a client in the child day care facility or family day care*  
16 *home shall be exempt from the requirements of this subdivision.*

17 *(D) A contracted repair person retained by the child day care*  
18 *facility or family day care home, if not left alone with children in*  
19 *care, shall be exempt from the requirements of this subdivision.*

20 *(E) Any person similar to those described in this subdivision,*  
21 *as defined by the department in regulations.*

22 *(F) Employees of child care and development programs under*  
23 *contract with the State Department of Education who have*  
24 *completed a criminal records clearance as part of an application to*  
25 *the Commission on Teacher Credentialing, and who possess a*  
26 *current credential or permit issued by the commission, including*  
27 *employees of child care and development programs that serve both*  
28 *children subsidized under, and children not subsidized under, a*  
29 *State Department of Education contract. The Commission on*  
30 *Teacher Credentialing shall notify the department upon revocation*  
31 *of a current credential or permit issued to an employee of a child*  
32 *care and development program under contract with the State*  
33 *Department of Education.*

34 ~~*(I) This section does not apply to employees*~~

35 *(G) Employees of a child care and development program*  
36 *operated by a school district, county office of education, or*  
37 *community college district under contract with the State*  
38 *Department of Education who have completed a criminal record*  
39 *clearance as a condition of employment. The school district,*  
40 *county office of education, or community college district upon*



1 receiving information that the status of an employee's criminal  
2 record clearance has changed shall submit that information to the  
3 department.

4 ~~(2)~~

5 (3) Nothing in this subdivision shall prevent a licensee *or*  
6 *special permit holder* from requiring a criminal record clearance  
7 of any individuals exempt from the requirements under this  
8 subdivision.

9 (c) (1) (A) Subsequent to initial licensure, any person  
10 specified in subdivision (b) ~~and who is~~ not exempted from  
11 fingerprinting shall, as a condition to employment, residence, or  
12 presence in a child day care facility *or family day care home*, be  
13 fingerprinted and *shall* sign a declaration, under penalty of  
14 perjury, regarding any prior criminal conviction *or any arrest for*  
15 *any crime specified in subparagraph (B) of paragraph (1) of*  
16 *subdivision (a)*. The licensee shall submit these fingerprints to the  
17 Department of Justice, along with a second set of fingerprints for  
18 the purpose of searching the records of the Federal Bureau of  
19 Investigation, ~~or to~~ *shall* comply with paragraph (1) of subdivision  
20 (h), prior to the person's employment, residence, or initial  
21 presence in the child day care facility.

22 (B) These fingerprints shall be ~~on a card provided in a form~~  
23 *required* by the State Department of Social Services for the  
24 purpose of obtaining a permanent set of fingerprints and submitted  
25 to the Department of Justice by the licensee or sent by electronic  
26 transmission in a manner approved by the State Department of  
27 Social Services. A licensee's *or special permit holder's* failure to  
28 submit fingerprints to the Department of Justice, or to comply with  
29 paragraph (1) of subdivision (h), as required in this section, shall  
30 result in the citation of a deficiency, *by the State Department of*  
31 *Social Services and against the licensee or special permit holder*,  
32 and an immediate assessment of civil penalties in the amount of  
33 one hundred dollars (\$100) per violation. The State Department of  
34 Social Services may assess civil penalties for continued violations  
35 permitted by Sections 1596.99 and 1597.62. The fingerprints shall  
36 then be submitted to the ~~State Department of Social Services~~  
37 *Justice* for processing. Within 14 calendar days of the receipt of the  
38 fingerprints, the Department of Justice shall notify the State  
39 Department of Social Services of the criminal ~~record~~ *history*  
40 information, as provided in this subdivision. If no criminal ~~record~~

1 *history* information has been recorded, the Department of Justice  
2 shall provide the licensee *or special permit holder* and the State  
3 Department of Social Services with a statement of that fact within  
4 14 calendar days of receipt of the fingerprints. If new fingerprints  
5 are required for processing, the Department of Justice shall, within  
6 14 calendar days from the date of receipt of the fingerprints, notify  
7 the licensee that the fingerprints ~~were illegible~~ *are required*.

8 (C) Documentation of the individual's clearance or exemption  
9 *from disqualification pursuant to subdivision (f)* shall be  
10 maintained by the licensee *or special permit holder*, and shall be  
11 available for inspection. ~~When live-scan technology is~~  
12 ~~operational, as defined in Section 1522.04, the~~ *The* Department of  
13 Justice shall notify the department, as required by ~~that section~~  
14 *Section 1522.04*, and *shall* notify the licensee *or special permit*  
15 *holder*; by mail within 14 days of electronic transmission of the  
16 fingerprints to the Department of Justice, if the person has no  
17 criminal ~~record~~ *history*. Any violation of the regulations adopted  
18 pursuant to Section 1522.04 shall result in the citation of a  
19 deficiency and an immediate assessment of civil penalties, *by the*  
20 *State Department of Social Services and against the licensee or*  
21 *special permit holder*; in the amount of one hundred dollars (\$100)  
22 per violation. The department may assess civil penalties for  
23 continued violations, as permitted by Sections 1596.99 and  
24 1597.62.

25 (2) Except for persons specified in ~~paragraph (2) of~~ subdivision  
26 (b) *who are not exempted from fingerprinting*, the licensee *or*  
27 *special permit holder* shall endeavor to ascertain the previous  
28 employment history of persons required to be fingerprinted under  
29 ~~this~~ subdivision (b). If it is determined by the department, on the  
30 basis of fingerprints submitted to the Department of Justice, that  
31 the person has been convicted of a sex offense against a minor, an  
32 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the  
33 Penal Code, or a felony, *or has been arrested for any crime*  
34 *specified in subparagraph (B) of paragraph (1) of subdivision (a),*  
35 *subject to subdivision (e)*, the State Department of Social Services  
36 shall notify the licensee *or special permit holder* to act  
37 immediately to terminate the person's employment, remove the  
38 person from the child day care facility *or family day care home*, or  
39 bar the person from entering the child day care facility *or family*  
40 *day care home, as appropriate*. The department may subsequently

1 grant an exemption *from disqualification* pursuant to subdivision  
 2 (f). If the conviction was for another crime except a minor traffic  
 3 violation, the licensee *or special permit holder* shall, upon  
 4 notification by the ~~State Department of Social Services~~  
 5 *department*, act immediately to either ~~(1)~~ (A) terminate the  
 6 person's employment, remove the person from the child day care  
 7 facility *or family day care home*, or bar the person from entering  
 8 the child day care facility *or family day care home, as appropriate*;  
 9 or ~~(2)~~ (B) seek an exemption pursuant to subdivision (f). The  
 10 department shall determine if the person shall be allowed to remain  
 11 in the *child day care facility or family day care home* until a  
 12 decision on the exemption *from disqualification pursuant to*  
 13 *subdivision (f)* is rendered. A licensee's *or special permit holder's*  
 14 failure to comply with the department's prohibition of  
 15 employment, contact with clients, or presence in the *child day care*  
 16 *facility or family day care home* as required by this paragraph shall  
 17 be grounds for disciplining the licensee pursuant to Section  
 18 1596.885 or 1596.886.

19 (3) The department may issue an exemption on its own motion  
 20 pursuant to subdivision (f) if the person's criminal history  
 21 indicates that the person is of good character based on the age,  
 22 seriousness, and frequency of the conviction or convictions. The  
 23 department, in consultation with interested parties, shall develop  
 24 regulations to establish the criteria to grant an exemption pursuant  
 25 to this paragraph.

26 (4) Concurrently with notifying the licensee pursuant to  
 27 paragraph ~~(3)~~ (2), the department shall notify the affected  
 28 individual of his or her right to seek an exemption pursuant to  
 29 subdivision (f). The individual may seek an exemption only if the  
 30 licensee terminates the person's employment or removes the  
 31 person from the *child day care facility or family day care home*  
 32 after receiving notice from the department pursuant to paragraph  
 33 (3).

34 (d) (1) For purposes of this section or any other provision of  
 35 this chapter, a conviction means a plea or verdict of guilty or a  
 36 conviction following a plea of nolo contendere. Any action ~~which~~  
 37 *that* the department is permitted to take following the  
 38 establishment of a conviction may be taken when the time for  
 39 appeal has elapsed, ~~or when~~ the judgment of conviction has been  
 40 affirmed on appeal, or when an order granting probation is made

1 suspending the imposition of sentence, notwithstanding a  
2 subsequent order pursuant to Sections 1203.4 and 1203.4a of the  
3 Penal Code permitting the person to withdraw his or her plea of  
4 guilty and to enter a plea of not guilty, or setting aside the verdict  
5 of guilty, or dismissing the accusation, information, or indictment.  
6 For purposes of this section or any other provision of this chapter,  
7 the record of a conviction, or a copy thereof certified by the clerk  
8 of the court or by a judge of the court in which the conviction  
9 occurred, shall be conclusive evidence of the conviction. For  
10 purposes of this section or any other provision of this chapter, the  
11 arrest disposition report certified by the Department of Justice, or  
12 documents admissible in a criminal action pursuant to Section  
13 969b of the Penal Code, shall be prima facie evidence of  
14 conviction, notwithstanding any other provision of law  
15 prohibiting the admission of these documents in a civil or  
16 administrative action.

17 (2) For purposes of this section or any other provision of this  
18 chapter, the department shall consider criminal convictions from  
19 another state or federal court, *or arrests from another state or by*  
20 *any federal agency*, as if the criminal offense was committed in this  
21 state.

22 (e) The State Department of Social Services shall not use a  
23 record of arrest to deny, revoke, or terminate ~~any~~ *an* application,  
24 license, *special permit*, employment, or residence unless the  
25 department investigates the incident and secures evidence,  
26 whether or not related to the incident of arrest, that is admissible  
27 in an administrative hearing to establish conduct by the person that  
28 may pose a risk to the health and safety of any person who is or may  
29 become a client. The ~~State Department of Social Services~~  
30 *department* is authorized to obtain any arrest or conviction records  
31 or reports from any law enforcement agency as necessary to the  
32 performance of its duties to inspect, license, *issue a special permit*  
33 *for*, and investigate ~~community~~ *child day care facilities or family*  
34 *day care homes* and individuals associated with a ~~community~~ *child*  
35 *day care facility or family day care home*.

36 (f) (1) After review of the record, the director may grant an  
37 exemption from disqualification for a license or special permit as  
38 specified in ~~paragraphs (1) and (4) of~~ subdivision (a), or for  
39 employment, residence, or presence in a child day care facility *or*  
40 *family day care home* as specified in ~~paragraphs (3), (4), and (5)~~

of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant ~~and the~~ *or other* person convicted *of, or arrested for,* the crime, ~~if other than the applicant, are~~ *is* of good character so as to justify issuance of the license or special permit or granting an exemption ~~for purposes of subdivision (c)~~ *pursuant to this subdivision*. However, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) or (b) of Section 451, of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a *child day care* facility *or a family day care home* on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee *or special permit holder*, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(h) (1) For the purposes of compliance with this section, the ~~department~~ *State Department of Social Services* may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one *child day care* facility *or family day care home* to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another *child day care* facility *or family day care home* licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee *or special permit holder*, who shall enclose a

1 self-addressed stamped envelope for this purpose, the department  
2 shall verify whether the individual has a clearance that can be  
3 transferred.

4 (2) ~~The State Department of Social Services~~ *department* shall  
5 hold criminal record clearances in its active files for a minimum  
6 of two years after ~~an employee~~ *a person* is no longer employed ~~at~~  
7 *by, residing at, or present in* a licensed *child day care facility or*  
8 *family day care home* in order for the criminal record clearances  
9 to be transferred.

10 ~~(i) Amendments to this section made in the 1998 calendar year~~  
11 ~~shall be implemented commencing 60 days after the effective date~~  
12 ~~of the act amending this section in the 1998 calendar year, except~~  
13 ~~those provisions for the submission of fingerprints for searching~~  
14 ~~the records of the Federal Bureau of Investigation, which shall be~~  
15 ~~implemented commencing January 1, 1999.~~

16 *SEC. 2. Section 1596.8717 is added to the Health and Safety*  
17 *Code, to read:*

18 *1596.8717. (a) In addition to the requirements of Section*  
19 *1596.871, before issuing a license or special permit to any person*  
20 *to operate or manage a child day care facility or a family day care*  
21 *home pursuant to this chapter, and before any person specified in*  
22 *subdivision (b) of Section 1596.871 who is not exempted from*  
23 *fingerprinting pursuant to that section is employed by, resides at,*  
24 *or is present in a child day care facility or family day care home,*  
25 *the department shall secure from the local law enforcement agency*  
26 *of the city or county, as appropriate, in which the child day care*  
27 *facility or family day care home is or is to be located, or in which*  
28 *the applicant or other person resides, or both, information*  
29 *regarding the contacts by the local law enforcement agency, if any,*  
30 *with the applicant or other person. The local law enforcement*  
31 *agency shall supply, to the department, the information requested*  
32 *pursuant to this subdivision.*

33 *(b) Subject to subdivision (e), the department may deny the*  
34 *application for, or revoke a license or special permit based on the*  
35 *information secured pursuant to subdivision (a).*

36 *(c) The department is also authorized to obtain information*  
37 *regarding the contacts by a local law enforcement agency with a*  
38 *licensee, special permit holder, or a person specified in subdivision*  
39 *(b) of Section 1596.871 who is not exempted from fingerprinting,*  
40 *as necessary to the performance of the department's duties to*



1 *inspect or investigate a child day care facility or family day care*  
 2 *home and persons associated with a child day care facility or*  
 3 *family day care home. The local law enforcement agency shall*  
 4 *supply, to the department, the information requested pursuant to*  
 5 *this subdivision.*

6 *(d) Subject to subdivision (e), the department may revoke the*  
 7 *license or special permit, based on the information secured*  
 8 *pursuant to subdivision (c).*

9 *(e) The department shall not use a record of contacts with a*  
 10 *local law enforcement agency to deny an application for a license*  
 11 *or special permit to operate or manage a child day care facility or*  
 12 *family day care home, or to revoke a license or special permit to*  
 13 *operate a child day care facility or family day care home, unless*  
 14 *the department investigates the incident and secures evidence,*  
 15 *whether or not related to the incident of contact, that is admissible*  
 16 *in an administrative hearing to establish conduct by the applicant,*  
 17 *licensee, special permit holder, or person described in subdivision*  
 18 *(b) of Section 1596.871 who is not exempted from fingerprinting,*  
 19 *that may pose a risk to the health and safety of any person who is*  
 20 *or may become a client.*

21 *SEC. 3. No reimbursement is required by this act pursuant to*  
 22 *Section 6 of Article XIII B of the California Constitution for*  
 23 *certain costs that may be incurred by a local agency or school*  
 24 *district because in that regard this act creates a new crime or*  
 25 *infraction, eliminates a crime or infraction, or changes the penalty*  
 26 *for a crime or infraction, within the meaning of Section 17556 of*  
 27 *the Government Code, or changes the definition of a crime within*  
 28 *the meaning of Section 6 of Article XIII B of the California*  
 29 *Constitution.*

30 *However, notwithstanding Section 17610 of the Government*  
 31 *Code, if the Commission on State Mandates determines that this*  
 32 *act contains other costs mandated by the state, reimbursement to*  
 33 *local agencies and school districts for those costs shall be made*  
 34 *pursuant to Part 7 (commencing with Section 17500) of Division*  
 35 *4 of Title 2 of the Government Code. If the statewide cost of the*  
 36 *claim for reimbursement does not exceed one million dollars*  
 37 *(\$1,000,000), reimbursement shall be made from the State*  
 38 *Mandates Claims Fund.*

39 ~~*Safety Code, to read:*~~

~~1596.8717. (a) Notwithstanding Article 2.5 (commencing with Section 11075) of Chapter 1 of Title 1 of Part 4 of the Penal Code or any other provision of law, a law enforcement agency may disseminate criminal offender record information or any other information concerning any encounter with law enforcement that is not already available under existing law of any person described under subdivision (b) of Section 1596.871 to a day care facility or a family day care home described in subdivision (d) of Section 1596.792, if that person voluntarily signs a waiver as described in subdivision (b).~~

~~(b) The department shall prepare the waiver forms described in subdivision (a) and distribute them to law enforcement agencies. The forms shall include a statement advising the person of the confidential nature of the information and of any existing statutory or constitutional right to privacy he or she has in the information under existing law. The waiver shall only apply to the dissemination of the information by a law enforcement agency to a child day care facility or a family day care home.~~

~~(c) A person who works at, operates, or is otherwise affiliated with a child day care facility or a family day care home who receives information pursuant to this section may not disclose this information to any third party unless otherwise authorized to do so according to existing law.~~

~~(d) Any person who works at, operates, or is otherwise affiliated with a child day care facility or a family day care home and who intentionally discloses information, not otherwise public, which that person knows or should have known was obtained from confidential information obtained pursuant to this section, shall be guilty of a misdemeanor and subject to those criminal penalties specified in Section 1596.890.~~

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within~~

1 ~~the meaning of Section 6 of Article XIII B of the California~~  
2 ~~Constitution.~~

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